IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.7650 OF 2005

Mahadev Joti Umrani,)
Age 65 years, Occ: Retired,)
R/at Mukta Sainik Society,)
Near Shankarnagar, Jaysingpur,)
Tal.Shirol, Dist. Kolhapur.).. Petitioner

Vs.

1. The Collector,)
Kolhapur,)

2. Dy.Collector,)
Kolhapur.)

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Shri Ashutosh Gole i/b Shri N.R.Bubna for the petitioner.

Shri C.R.Sonawane, AGP for the respondents.

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CORAM : R.M.S.KHANDEPARKAR &
SMT.ROSHAN DALVI, JJ.

DATED : 16th JUNE, 2006

ORAL JUDGMENT : (Per R.M.S.Khandeparkar, J)

1. Heard. Rule. By consent, the rule is made returnable forthwith.

2. The petitioner challenges the order dated 2nd June, 2005 passed by the District Collector, Kolhapur,

rejecting the application filed by the petitioner for grant of Plot No.2 bearing CTS No.69 admeasuring 148.64 sq.meters situate at Taluka- Shirol, Jaysingpur. The challenge is on two counts. Firstly that the authorities were required to consider the application in terms of the Rule 28 of the Disposal of the Government Lands Rules, 1971 framed under the Maharashtra Land Revenue Code, 1966 and not in terms of the Government Resolution dated 31st December, 1971 in view of the specific direction given in that regard by an order dated 11th March, 2005 of this Court in Writ Petition No.4067 of 2004, and secondly that the plot in question has not at all been allotted to any other person. According to the petitioner, the authorities have rejected the application of the petitioner ignoring the above two aspects of the matter, and therefore, they have acted illegally, and therefore, the impugned order stands vitiated and requires to be set aside.

3. Undisputedly, in the earlier Writ Petition No.4067 of 2044 between the parties to this proceeding, the Division Bench of this Court had specifically directed the respondents to reconsider the application of the petitioner for grant of plot in accordance with the Rule 28 of the Disposal of

Government Lands Rules, 1971, hereinafter called as "the said Rules", and not in accordance with the said Government Resolution. The specific observations in that regard in the said order read thus:-

> "In the instant case we are not concerned with the Special Scheme by the Government under those G.Rs. We are concerned with Rule 28. In other words the case of the Petitioner will have to be considered by the Respondents under Rule 28."

4. Plain reading of the impugned order discloses that the authorities instead of considering the application in accordance with the provisions of Rule 28 of the said Rules, proceeded to decide the application in accordance with the Government Resolution Dated 31st December, 1971. The learned AGP has candidly admitted that the authorities could not have applied to the proceedings the provisions of the said G.R. and ought to have considered the application on the basis of the Rule 28 of the said Rules in view of the specific direction issued by this Court in the Writ Petition No.4067 of 2004 by an order dated 11th March, 2005. Indeed, as stated above, the order of this Court in that regard is very clear. One

fails to understand as to how the authorities instead of considering the application in accordance with the provisions of the Rule 28 of the said Rules have proceeded to decide the application in terms of the said G.R.

5. The learned AGP has fairly stated that the authorities will reconsider the application within a period of 10 weeks and will take appropriate decision in accordance with the provisions of law comprised under Rule 28 of the said Rules. He however has also submitted that the records with the respondents disclose disposal of the Plot No.2 which was applied for by the petitioner. The contention in that regard is seriously disputed by the learned advocate for the petitioner. Be that as it may, the authorities shall consider the application of the petitioner afresh in accordance with the provisions of Rule 28 of the said Rules. The petitioner is at liberty to point out to the authorities if the Plot No.2 is still available for allotment. The authorities, in that case, shall consider the application in relation to the said plot, otherwise the respondents are free to consider the application in relation to some other plot for the petitioner. We leave this issue open for an appropriate decision by the concerned authority in

that regard with liberty to the petitioner to putforth all necessary evidence in relation to his claim before the authority.

6. In order to enable the respondents to dispose of the matter as expeditiously as possible, the petitioner shall appear before the District Collector of Kolhapur along with all necessary documentary evidence on or before 3rd July, 2006. The period of 10 weeks for disposal of the matter shall commence from 3rd July, 2006.

7. The petition is accordingly allowed and the rule is made absolute in above terms with no order as to costs.

(R.M.S.KHANDEPARKAR, J)

(SMT.ROSHAN DALVI, J)

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